United Nations **AT**

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 953

Case No. 1062: YA'COUB

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Hubert Thierry, President; Mr. Chittharanjan Felix Amerasinghe; Ms. Marsha A. Echols;

Whereas at the request of Ali Mohammed Ya'coub, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA or the Agency), the President of the Tribunal, with the agreement of the Respondent, extended until 30 April 1999 the time limit for the filing of an application with the Tribunal;

Whereas, on 19 January 1999, the Applicant filed an application containing pleas which read as follows:

"**SECTION II PLEAS**

Applicant prays the esteemed Tribunal to:

a. [Reimburse] medical treatment expenses plus due interest.

b. [Pay] interest on separation benefits between date of payment and the date of settlement.

c. [Pay] counselling and secretarial expenses estimated at US $ 400."

Whereas the Respondent filed his answer on 27 October 1999;

Whereas on 6 July 2000, the Applicant submitted an additional document;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNRWA as an Area staff member, with the title of Trade Instructor, Radio and TV Mechanic, at the Vocational Training Center, Damascus, Syrian Arab Republic (SAR), on a temporary indefinite appointment, on 15 June 1985. He separated from service on 1 July 1996, for health reasons.

On 22 April 1995, the Applicant was diagnosed with cancer of the vocal cords. On 4 May 1995, after unsuccessful surgery in Damascus, SAR, while he was still on sick leave, he requested the Field Personnel Officer (FPO), SAR, for permission to travel to Jordan for urgent medical treatment. On the same date, the FPO approved the Applicant's request. In a letter dated 9 May 1995, the Field Administration Officer (FAO), SAR, informed the Applicant that the period of leave would be debited against his sick-leave accruals and that he had to produce upon return a medical certificate duly certified by the Chief, Health Programme, Jordan, indicating "the nature of your disease and the period of treatment".

In early June, the Applicant, on the advice of his doctors in Jordan, travelled to the West Bank (Palestine) for radiotherapy (cobalt treatment, which was not available in Jordan) at the Haifa Italian Hospital, without informing his office in advance. He received 34 radiotherapy sessions, between 6 June and 21 July 1995. On 12 September 1995, the Applicant wrote to the Chief, Field Health Programme, SAR, attaching his medical report and requesting that his travel abroad be considered as sick leave and that he be compensated for "all the medical expenses during my travel for treatment".

On 24 September 1995, the Officer-in-Charge, Personnel Division, SAR, replied to the Applicant's letter, on behalf of the Chief, Field Health Programme, SAR. He approved the

Applicant's absence as sick leave, but regretted that the request for reimbursement could not be approved because the "[Applicant] had failed to follow the normal procedures adopted by the Agency". On 26 September 1995, the Applicant replied to the FAO, expressing surprise that his medical expenses would not be paid "because [he] did not abide by UNRWA rules which [he was] not aware of", and requesting reconsideration of the decision. In his reply of 18 October 1995, the FPO advised the Applicant that he had nothing to add to what had been communicated in the letter of 24 September 1995.

On 13 November 1995, the Applicant wrote to the Director, UNRWA Affairs, SAR, requesting his assistance in the matter. On 27 November 1995, the Officer-in-Charge, UNWRA Affairs, SAR, informed the Applicant that he could not accede to his request.

On 14 January 1996, the Applicant asked the Principal, Damascus Training Center, to make arrangements to refer his case to a medical board, because he felt unable to continue his work in vocational training. On 11 February 1996, the Principal requested the Chief, Field Health Programme, SAR, to convene a medical board. On 29 February1996, the Medical Board convened to examine the Applicant concluded that he was "unfit for further service with the Agency". The Chief, Field Health Programme, SAR, concurred with this conclusion on 3 March 1996. On 13 March 1996, the FPO advised the Applicant of the conclusion of the Medical Board, and informed him that he would be placed on sick leave status until he had exhausted all his sick-leave accruals, i.e. until 1 July 1996, on which date his services would be terminated for health reasons under the provisions of Area staff rule 109.7.

On 19 March 1996, the Applicant wrote to the Director, UNWRA Affairs, SAR, asking him to pay his separation benefits using the exchange rate of SYP (Syrian pounds) 26.60 the exchange rate in March 1996, and not the less favourable exchange rate of July 1996. The Applicant stated that in return he was willing to release the Agency from any obligations after the date of the decision to terminate him for health reasons (13 March 1996). The FPO advised the Applicant on 31 March 1996 that his request could not be acceded to. On 12 June 1997, the Applicant wrote a letter to the Director, UNRWA Affairs, SAR, copied to the Commissioner-General, requesting review of the decisions not to reimburse his medical expenses and not to use the more favourable exchange rate.

On 25 July 1997, the Applicant lodged an appeal with the JAB against the refusal to (a) reimburse his medical expenses with interest, (b) pay his separation benefits at SYP.26.60 to the US dollar plus interest, and (c) pay secretarial and counselling fees.

On 7 August 1997, the Officer-in-Charge, UNRWA Affairs, SAR, advised the Applicant that having reviewed the case, he could not accede to his request for reimbursement, because the Applicant had not followed the normal procedures adopted by the Agency. In particular, he was "authorized to **travel** outside Syria for medical treatment, but [he] neither applied for nor [was he] authorized to have [his] expenses for medical treatment outside Syria reimbursed by the Agency". He also denied the request for the use of the more favourable exchange rate.

On 7 October 1997, the FAO advised the Applicant that the Commissioner-General had decided that his separation benefits be paid "at the exchange rate applicable on 30 April 1996 (i.e. SYP. 26.60 for one US dollar) provided that the Agency should receive credit for the salaries received by [him] after that date".

On 15 October 1997, the Secretary of the JAB asked the Applicant whether he wished to pursue his appeal, in light of the decision of the Commissioner-General. On 23 October 1997, the Applicant replied in the affirmative, as the Commissioner-General had only acceded to one of his pleas.

The JAB submitted its report on 25 March 1998. Its evaluation, judgement and recommendation read as follows:

"**III. EVALUATION & JUDGEMENT**

30. In its deliberations, the Board examined all documents cited before it, including the Appellant's personal file and came out with the following:

(a) The Board dwelt on the preliminary issue of receivability and decided to declare the appeal receivable due to the serious illness that the Appellant has.

(b) The Board noted that the Appellant's claim for reimbursement of medical expenses plus interest was not well founded, for the Appellant failed to show a written medical report from the first doctor recommending that he needs to be treated in the Italian Hospital in Haifa.

(c) The Board also noted that there are no provisions in the Area Staff Rules that govern payment of interest and secretarial and counseling fees.

(d) The Board noted that the Appellant's claim for interest on the money which was not paid to him in due time is well founded, because since the Administration kept his money for 18 months and the interest rate was still in effect, then it is only logical that the Appellant receives his money plus the interest.

IV. RECOMMENDATION

31. In view of the foregoing …, the Board unanimously makes its recommendation to uphold the Administration's decision, concerning the reimbursement of the Appellant's medical treatment expenses and interest, and the request for payment of secretarial and counseling fees.

As for the claim for interest on the separation benefits between the date of payment and the date of settlement, the Board unanimously makes its recommendation that the Administration's decision be reviewed."

On 22 April 1998, the Commissioner-General transmitted a copy of the JAB report to the Applicant and informed him as follows:

"…

The Board stated that it considered the appeal receivable despite the preliminary objections raised by the Administration 'due to the serious illness that the Appellant has'. In its findings, the Board makes no distinction between the issue of competence and the issue of the receivability of the claim; two separate issues in respect of which the Administration has made separate and distinct submissions.

The issue of competence was raised by the Administration in respect of your claim for secretarial and counseling fees and your claim for payment of interest accrued in connection with your separation benefits. Staff rule 111.1 (5) provides that the Board shall determine its own competence in cases of doubt. However, it is not possible to discern from the Board's recommendations whether the issue of competence was considered. I have, therefore, not been advised on this aspect of the appeal and I have therefore requested clarification from the Board on this point.

The issue of receivability was raised in connection with your claim for reimbursement of your medical expenses. On this issue, the Board stated that it had found

the appeal receivable 'due to the serious illness that the Appellant has.' However, a 'serious illness' of itself does not constitute exceptional circumstances upon which a decision to waive time limits can be based. While it is not disputed that you are seriously ill, specific reasons why it took you two years to appeal the administrative decision not to reimburse you for your medical expenses (during which period you requested reviews of other administrative decisions) have not been submitted to or considered by the Board. Exceptional circumstances cannot be assumed or declared to exist without full consideration of the reasons, if any, adduced by the staff member as to why he or she did not meet the time limits. There is no evidence of any such consideration in this case. On these grounds, I reject this part of the Board's recommendation.

In substance, the Board decided that your claim for reimbursement of medical expenses plus interest was not well-founded because you had failed to present a proper medical report. The Board further advised that the Area Staff Rules do not require the payment of secretarial and counseling fees. Without prejudice to the preliminary issues discussed above, I agree with the Board's conclusions on this issue and accordingly dismiss this part of the appeal.

Lastly, the Board decided that your claim for payment of accrued interest between the date of payment and the date of the separation entitlements was well-founded 'because since the Administration kept (your) money for 18 months and the interest rate was still in effect, then it is only logical that the Appellant receives his money plus due interest.' There is however no provision in the Staff Rules, nor is there an established practice within the Agency, on which to base payment of accrued interest in connection with emoluments paid by the Agency. Therefore, I reject the Board's conclusions and the appeal on this issue.

..."

On 19 January 1999, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. He followed the prescribed procedures when he applied for reimbursement of medical treatment expenses. The medical bills submitted by him for reimbursement were reasonable and necessary under the circumstances.

2. The Applicant is entitled to interest on his separation benefits which were due on 1 July 1996, but not actually paid to him until October 1997.

Whereas the Respondent's principal contentions are:

1. The Applicant's claim for compensation for reimbursement of medical expenses is not receivable by the Tribunal as he failed to submit his written appeal to the JAB within thirty days from the date of the final response to his request for review of the decision not to make such reimbursement. He therefore failed to comply with paragraph 1 of Area staff rule 111.3 (3).

2. The Applicant's claim for reimbursement of medical expenses plus interest is unjustified because he failed to comply with Personnel Directive A/15 dated 22 January 1993 which conditioned reimbursement on prior authorization of the treatment. Furthermore the Applicant did not substantiate the need for emergency medical care or inform the Agency promptly after such treatment.

3. The Applicant's claim for payment of accrued interest on separation benefits is not receivable, since he never made a request for interest; consequently no administrative decision existed. Hence this aspect of his appeal "was not directed at a specific administrative decision, as required by Area staff regulation 11.1".

The Tribunal, having deliberated from 17 to 28 July 2000, now pronounces the following judgement:

I. The Tribunal will first recall the issues before it in this case.

(i) Did the Applicant delay too long in appealing to the JAB with regard to the claim for medical expenses?

(ii) If not, does he have a good claim for the medical expenses incurred by him?

(iii) Can the Applicant bring a claim for interest on his separation benefits?

(iv) Is the Applicant entitled to costs?

II. On the first issue the Tribunal notes the following relevant facts:

(a) On 12 September 1995, the Applicant requested reimbursement for all medical expenses incurred.

(b) On 24 September 1995, the Officer-in-Charge, Personnel Division, refused the Applicant's request "as [the Applicant] had failed to follow the normal procedures adopted by the Agency".

(c) On 13 November 1995, the Applicant wrote to the Director, UNRWA Affairs, in effect requesting review of the decision.

(d) On 27 November 1995, the Officer-in-Charge, UNRWA Affairs, replied rejecting his claim for medical expenses.

(e) On 12 June 1997, the Applicant *again* wrote to the Director, UNRWA Affairs, requesting review of the administrative decision.

(f) On 25 July 1997, the Applicant appealed to the JAB making several claims including the claim for reimbursement of medical expenses.

(g) On 7 August 1997, the Officer-in-Charge, UNRWA Affairs, replied rejecting the claim made on 12 June 1997.

III. The facts show clearly that the Applicant's claim was rejected after administrative review on 27 November 1995. The Applicant appealed to the JAB on 25 July 1997, 20 months later. His second request for review on 12 June 1997 cannot be regarded as the proper request for review because the Applicant appealed to the JAB on 25 July 1997 before receiving a reply to his 12 June letter. He must have believed that he had already exhausted administrative review. In any event if the 12 June letter were regarded as the proper request for administrative review it would not have been timely, in view of the first decision rejecting his claim made on 27 November 1995. Even if the 12 June letter is regarded as the proper request for administrative review the JAB would have rejected the appeal on the ground that the Applicant had not exhausted administrative review.

IV. However, the proper request for administrative review was, in the opinion of the Tribunal, made on 13 November 1995. The decision rejecting the claim on review was given on 27 November 1995.

V. In whichever way the facts are interpreted the question is whether the JAB correctly regarded the appeal as receivable under the exception for exceptional circumstances. Either the Applicant took about 20 months to apply for administrative review, which was far longer than allowed (30 days), or he appealed to the JAB 20 months or so after the decision on administrative review, which was also much longer than allowed (30 days).

The 20-month period could not, the Tribunal finds, be justified in either case on the basis of exceptional circumstances, which the Applicant claims existed because of his illness. Applicants are expected to act with due diligence. The Applicant's illness may be good cause for exceeding the time limits but does not justify exceeding them by 20 months. There is no evidence that, for example, the Applicant was unconscious or completely incapacitated for that length of time.

VI. The purpose of time-limits in regard to internal remedies is to preserve the stability of the position in law of the parties (see ILOAT Judgement No. 602, *in re Decroix* (1984)). Even if extensions for equitable considerations are possible, this happens very rarely and must be carefully justified. Otherwise the purpose of time-limits would be totally defeated. The Tribunal is of the view that the Applicant, for example, could have entrusted his case to a lawyer or counsellor who could have acted with the minimum delay. In short, a delay of 20 months is not justifiable.

The Tribunal concludes on the first issue that the Applicant had not exhausted his internal remedies in a timely manner. Therefore, the JAB should not have received the appeal.

VII. In the above circumstances the second issue becomes moot.

VIII. On the third issue to which the matter of the time limit is not relevant, the Tribunal agrees with the Respondent that there was no administrative decision to challenge. It is a recognized principle of international administrative law that in general in order that a tribunal may exercise jurisdiction there must be a *final decision* affecting the staff member taken by the Administration (cf. Judgements No. 221, *Berubé* (1977); No. 237, *Powell* (1979); No. 304, *Moser* (1983) and No. 329, *Longerich* (1984)). It is understandable that the Administration must be given the opportunity to

consider and take a decision on a claim. In this case the Applicant has not submitted at all his claim for interest to the Administration. The Tribunal, therefore, cannot assume jurisdiction on this issue.

IX. On the fourth issue of costs, the Tribunal notes that the Applicant has not won any of his claims. Therefore, the question of awarding costs, which it is the Tribunal's practice hitherto to do only in exceptional circumstances, does not arise. The claim for costs is rejected.

X. For the above reasons, the Tribunal rejects the application in its entirety.

(Signatures)

Hubert THIERRY
President

Chittharanjan Felix AMERASINGHE
Member

Marsha A. ECHOLS
Member

Geneva, 28 July 2000

Maritza STRUYVENBERG
Executive Secretary